MEMO ENDORSED

Fox Rothschild LLP
ATTORNEYS AT LAW

100 Park Avenue, Suite 1500
New York, NY 10017
Tel 212.878.7900 Fax 212.692.0940
www.foxrothschild.com

Seth M. Kaplan
Direct Dial: (212) 878-7916
Email Address: skaplan@foxrothschild.com

May 24, 2010

VIA HAND DELIVERY

Hon Leonard B. Sand.
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: Spicer *et. al.* v. Pier Sixty, LLC, *et. al.* – Case No. 08-Civ-10240

Dear Judge Sand:

We represent the Defendants in the above-referenced action, and write to briefly respond to Plaintiffs' May 21, 2010 letter to the Court in which Plaintiffs seek permission to file a sur-reply brief in connection with Defendants' pending motion for summary judgment.

As Plaintiffs are undoubtedly aware, this Court has generally operated under the premise that "sur-replies are not permitted in federal court." In re Fiber Optek Interconnect Corp., Case 05-30045, 2009 WL 3074605 at *4 (S.D.N.Y. Sept. 23, 2009) (rejecting party's sur-reply brief as "procedurally improper"); see also Kapiti v. Kelly, 2008 U.S. Dist. LEXIS 21035, 2008 WL 754686 (S.D.N.Y. March 12, 2008) ("Allowing parties to submit surreplies is not a regular practice that courts follow, because such a procedure has the potential for placing a court in the position of refereeing an endless colley of briefs."); Amadasu v. Rosenberg, Case No. 03-Civ-6450, 2004 WL 3217625 at *1 (S.D.N.Y. Nov. 15, 2004) (holding that "no surreply is allowed" in response to defendant's reply papers). Plaintiffs' purported need to address Defendants' alleged "misstatements regarding Plaintiffs' submissions" merely served as a pretext for Plaintiffs' impermissible restatement of the case law and record evidence they previously cited in opposition to Defendants' summary judgment. See Rosa v. City University of New York, No. 04-CV-9139, 2007 WL 1001416 at *1 n.5 (S.D.N.Y. Apr. 2, 2007) (denying plaintiff's request for leave to file a surreply brief where Plaintiff was seeking to "simply repeat the arguments Plaintiff has made in his

MEMO ENDORSED

opposition papers"). Here, Plaintiffs offer no new or compelling grounds which would warrant an exception to the Court's rule regarding surreply briefs.

Moreover, in their reply papers, Defendants were not making a "newly raised argument," but rather were merely arguing that the alleged "admissible evidence" cited by Plaintiffs (i.e., the e-mails attached to Plaintiffs' counsel's declaration) was insufficient to defeat summary judgment as a matter of law -- which is the whole purpose of a reply brief. Indeed, if this were sufficient grounds for filing a surreply brief, permission for filing a surreply would need to be granted in connection with virtually every motion for summary judgment. If, however, the Court does consider Plaintiffs' additional arguments concerning this issue, Defendants respectfully request permission to respond accordingly.

Thus, for the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs' request for leave to file a surreply brief, and to strike Plaintiffs' May 21, 2010 letter from the record as an impermissible surreply brief.

We thank the Court for its time and consideration of this matter.

Sincerely,

Seth M. Kaplan

cc: Carolyn Richmond, Esq.
Denise Schulman, Esq., Counsel for Plaintiffs (via e-mail)

Application denied. Defendant may respond within twenty (20) days.
So ordered
6/1/10

MEMO ENDORSED